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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1939.

No. 770

MILK WAGON DRIVERS UNION, LOCAL 753, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, A VOLUNTARY ASSOCIATION; ROBERT G. FITCHIE, JAMES KENNEDY, STEVE SUMNER, FRED C. DAHMS, F. RAY BRYANT, ALVIN F. RICHARDS AND JOSEPH L. PATTERSON,

Petitioners,

VS.

LAKE VALLEY FARM PRODUCTS, INC., A CORPORATION; AMALGAMATED DAIRY WORKERS, LOCAL INDUSTRIAL UNION NO. 819, A VOLUNTARY UNINCORPORATED ASSOCIATION; LAKE VIEW CO-OPERATIVE OF WATERTOWN, WISCONSIN, AN AGRICULTURAL COOPERATIVE CORPORATION OF THE STATE OF WISCONSIN,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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Attorney for Petitioners.

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Of Counsel.

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IN THE

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OCTOBER TERM, A. D. 1939

No. .....

MILK WAGON DRIVERS UNION, LOCAL 753, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, A VOLUNTARY ASSOCIATION; ROBERT G. FITCHIE, JAMES KENNEDY, STEVE SUMNER, FRED C. DAHMS, F. RAY BRYANT, ALVIN F. RICHARDS AND JOSEPH L. PATTERSON,

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LAKE VALLEY FARM PRODUCTS, INC., A CORPORATION; AMALGAMATED DAIRY WORKERS, LOCAL INDUSTRIAL UNION NO. 819, A VOLUNTARY UNINCORPORATED ASSOCIATION; LAKE VIEW CO-OPERATIVE OF WATERTOWN, WISCONSIN, AN AGRICULTURAL COOPERATIVE CORPORATION OF THE STATE OF WISCONSIN,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable Charles Evans Hughes, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

The petition of Milk Wagon Drivers Union, Local 753, International Brotherhood of Teamsters, Chauffeurs,

Stablemen and Helpers of America, a voluntary association, Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards and Joseph L. Patterson, and the petition of each of them respectively show unto this Honorable Court:

A. Summary Statement of Matter Involved.

1. *Economic theories of the dispute as shown by the evidence.*

This case arises out of an economic dispute in the milk industry in the City of Chicago, Illinois.

The disputants are: a Chicago local A. F. of L. craft union including its officers and members on the one hand (petitioners in this court and defendants below, hereinafter referred to as defendants), and on the other hand a "non-union" Chicago dairy, a Chicago local C. I. O. Industrial Union and a Wisconsin Agricultural Cooperative Corporation (respondents in this court and plaintiffs below, hereinafter referred to as plaintiffs).

The subject of the economic dispute is whether or not the plaintiff Lake Valley Farm Products, Inc., a corporation, should sign a union contract with the defendant A. F. of L. union. Under such union contract the plaintiff dairy would be required to pay its delivery men the union scale, maintain union hours and provide the proper working conditions specified by the standard Chicago union contract of defendant union (R. 147-154).

The plaintiff dairy refuses to sign such union contract and contends that signing such union contract would require the dairy to change its method of delivery of its dairy products to the public from that of a "vendor" system to that of the "employee' system. Under the vendor

system the plaintiff dairy sells its products to independent contractor drivers who are employers in their own right and having their own trucks, equipment and employees deliver the products of plaintiff dairy to retail milk stores and to housewives in the City of Chicago. The plaintiff dairy further contends that by means of this independent contractor system of delivery to retail milk stores in Chicago *its* "labor" costs of delivery are lower than under the "employee" system used by the unionized dairies in Chicago that operated under union contracts signed with defendant union; that because of such lower delivery costs it is enabled to sell milk to the public at "cut rate" prices that are lower prices than the prices of the milk sold by the union dairies that operate under the union contract with defendant union. The plaintiff "industrial" C. I. O. union has vendors as its members. The vendors of plaintiff dairy and their "helper" employees are members of this industrial union.

The defendant union contends that the vendor system is directly injurious to its members by virtue of the facts that the vendors and *their* employees work for lower "wage" return, longer hours, and under poorer working conditions than do the employees of union dairies which operate under a union contract; that the "vendor system" is a device whereby employers attempt to evade the requirements of a union contract; that the vendor system has caused loss of jobs to members of defendant union; that the spread of the vendor system to the present union dairies in Chicago would destroy the union and would destroy the benefits of the union contract for the union members. The defendant union is not desirous of changing the independent contractor system to an employee system but does desire to have the independent contractors and *their* employees work under conditions equal to those required by

the union contract. If the independent contractors and their helpers would operate under union conditions they would be taken into defendant union. The defendant union is not interested in the price of milk as such. It does not care what price is charged by the dairy for its products. If the dairy pays its men the union scale the union is satisfied regardless of the price of milk. If the dairy doesn't pay the union scale the union is *not* satisfied regardless of the price of milk to the public.

The union seeks to maintain and improve the benefits to its members. The price of the dairy's products is the concern of the dairy. The price of milk is determined by laws of economics.

The union is picketing by means of carrying banners or placards in front of the retail milk stores vending plaintiff dairy's products, to advertise to the public the existence of the dispute with the plaintiff dairy.

2. *Leading Facts Shown by Record.*

[We present the facts that we believe are proven by the record and material to the issues of *law* raised in our petition for certiorari. Where such facts are contrary to the opinion of the Circuit Court of Appeals or are not mentioned therein we refer to the record.]

The defendant union was organized in 1902. Its jurisdiction covers all drivers of milk wagons in the metropolitan area of the City of Chicago, Illinois. From 1902 the defendant union constantly engaged in activities to improve and did improve the working conditions of its members. In general the union attempted to secure for its members benefits resulting from trade unionism. Its membership reached its peak in 1931 when some 7,000 members were associated. The defendant union is a Chi-

cago local craft union affiliated with the American Federation of Labor through its relationship with the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers.

The defendant union has union contracts with approximately 120 out of 150 dairies selling milk products. The standard agreement is Defendant's Exhibit 3 (R. 147-154). This provides for hours of labor, details of work, wages, commissions and various other benefits and privileges pertaining to terms and conditions of employment. This agreement shows the benefits obtained by defendant union for its members.

In 1931 with the onset of the depression certain dairies began to discharge members of the defendant union as drivers of the milk trucks, and to put in their place individuals who owned their own trucks and operated as "independent contractors" in the sense that they purchased milk from the dairies and they sold it to the various retail store keepers and housewives. These vendors gradually developed long routes and engaged "helpers", *i. e.*, their own employees. The vendors and helpers' hours of labor were much longer than the hours of labor under the union agreement. The financial return, *i. e.*, "wages" were much lower than the union scale (R. 220). See also R. 68, 73, 77, 82, 87, 290, 300.

This system of competition persisted and flourished in the City of Chicago from 1931 onward to the present time. Membership in defendant union has constantly decreased since 1931. Part of this decrease is due to the competition with the vendor system (R. 97).

The Wagner Dairy had some vendors, but also had some individuals who were technical employees in the sense that they operated Wagner Dairy trucks and were put on a

straight salary therefor of $18 per week. Their salary was much lower than the union scale which was in 1938 a minimum of $48 per week and commissions.

Similarly individuals who had been vendors for the plaintiff dairy earned as low as $15 per week after paying all their expenses notwithstanding their longer hours and unregulated working conditions (R. 87, 89, 90).

The plaintiff, Lake Valley Farm Products, Incorporated, substantially distributed its milk products to grocery stores and to housewives by means of the so-called vendors.

The defendant union found that owners of some dairies continued to pay low financial returns to the drivers of their trucks and obtain long hours of labor from the drivers and their helpers by means of this vendor system. This system tended to displace union members from their jobs; it tended to injure and threaten the existence of the higher union scale and the better working conditions. The defendant union in attempting to avoid these injurious consequences to its members sought to unionize both the Wagner Dairy and the plaintiff, Lake Valley Farm Products, Incorporated. These attempts were unsuccessful (R. 220). See also R. 89, 90.

Defendant union in order to achieve the unionism of the plaintiff dairy sought to publicize plaintiff's non-unionism by means of banners, or placards carried in front of the stores vending the products of plaintiff dairy to the public. As soon as the store handled products of a union dairy the pickets were withdrawn.

In February 1938, the plaintiff C. I. O. union was organized to "represent" vendors and their helpers who were not members of defendant union.

Plaintiff union competed with defendant union and began to publicize on its own behalf by having the drivers dis-

tributing the products of plaintiff dairy give to the various store keepers the sign or card bearing on it the legend of the plaintiff union. See Plaintiff's Exhibit 1 (R. 121). The plaintiff union sought to destroy defendant union (R. 287-288, 328-329).

119 out of 120 union dairies in the City of Chicago sell cut-rate milk (R. 344).

The defendant union is not concerned with the price of milk but simply in the "hours and wages evils" of the vendor system (R. 328-345).

The price of milk was not solely dependent upon the wages paid to union men because in two instances the union scale has been increased while the price of milk to the public was decreased (R. 343).

The evidence discloses as found by the master that the plaintiff made no true attempt to obtain the assistance of the public authorities in an attempt to stop violence (R. 319).

The evidence discloses that the plaintiff at no time made any attempt to negotiate or arbitrate by any arbitration machinery its defense with the defendant union.

With regard to the acts of violence, the master's finding was against the plaintiff insofar as commission of acts of violence by the defendant was concerned with the exception of several instances.

There is proof that violence was committed by dairies that competed with each other for business (R. 330).

There is proof that other individuals having no relationship with the milk industry were guilty of acts of violence (R. 328).

Pleadings.

On May 21st, 1938, respondents, Lake Valley Farm Products, Inc., a corporation; Amalgamated Dairy Workers, Local Industrial Union No. 819, a voluntary unincorporated association; Lake View Co-Operative of Watertown, Wisconsin, an agricultural cooperative corporation of the State of Wisconsin, and one Joseph Wagner, doing business as Wagner Dairy Products filed their complaint in equity in the United States District Court for the Northern District of Illinois, Eastern Division, asking injunctive relief against the petitioners, Milk Wagon Drivers Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association; Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards and Joseph L. Patterson. The individual petitioners were named both individually and in their official capacity as officials of the said Milk Wagon Drivers Union (Rec. 2-3). In substance the main theories of the complaint were that the defendants were guilty of conspiracy and combination in restraint of trade and to foster a monopoly under the Sherman Act and Clayton Acts (Rec. 4-5, 15); that the defendants sought to maintain an artificial price of milk in the City of Chicago; that the defendants were guilty of physical violence against the plaintiffs; that as a means of carrying out the conspiracy the defendants caused its members to patrol in front of the retail stores selling plaintiffs' products to the public carrying a banner or placard, having the words inscribed thereon, "This milk store is unfair to Milk Wagon Drivers' Union, Local 753, I. B. T., affiliated with the A. F. L." The complaint charged that such picketing constituted secondary boycott. The complaint asked for relief by injunction restraining the defendants from various acts, including the patrolling

of the stores vending plaintiff dairy products to the public (Rec. 34).

On May 23rd, 1938, the cause was referred to the Master on plaintiffs' motion for preliminary injunction (Rec. 43). On May 27th, 1938, the defendants filed their answer. The theories of the answer in substance were, first, a denial of the facts alleged in the complaint; second, affirmative statement of the facts of the economic controversy between the defendants and the plaintiffs out of which the injunction suit arose. The answer sets out these facts so concisely that for purpose of brevity we respectfully refer the court to the following portions of our answer: R. 47-58

Considerable evidence was taken. The Master's Report was filed on August 8th, 1938 (Rec. 203-223). The Master made numerous findings of fact, and recommended that the relief prayed should be denied and that the bill of complaint should be dismissed for lack of jurisdiction (Rec. 223).

The Master's findings of fact and of law in substance are in favor of the issues of fact and law raised by the defendants' answer.

The plaintiffs filed exceptions to the Master's Report (Rec. 239). After argument the trial court overruled plaintiffs' exceptions.

Joseph Wagner, doing business as Wagner Dairy Products, was given leave to withdraw as party plaintiff (Rec. 246).

On December 15th, 1938, District Court made certain findings of fact and conclusions of law (R. 247-251). These findings of fact and conclusions of law are also in substance in favor of the issues of fact and law raised by defendants' answer.

On December 15th, 1938, the District Court entered a decree dismissing the said Joseph Wagner, doing business as Wagner Dairy Products with prejudice against any further proceedings on the matters alleged in the complaint, overruled the other plaintiffs' exceptions to the Master's Report, dismissed the complaint of the remaining plaintiffs, (*i. e.*, the present respondents) *both* for want of equity and for want of jurisdiction (Rec. 252).

Plaintiffs appealed from the decree to the United States Circuit Court of Appeals for the Seventh Circuit.

Judgment and Opinion of the United States Circuit Court of Appeals for the Seventh Circuit.

On October 12th, 1939, the cause was submitted to the Circuit Court of Appeals for the Seventh Circuit on the original supplemental transcripts of records, briefs and oral arguments.

On November 29th, 1939, the Circuit Court of Appeals for the Seventh Circuit by a divided court reversed the decree of the trial court and remanded the cause for further proceedings not inconsistent with the opinion of the majority of the court (Rec. 370). The majority opinion was rendered by Justice Sparks, with Justice Evans concurring, and Justice Treanor filed a dissenting opinion (Rec. 370-378).

On December 14th, 1939, the petitioners filed a petition for rehearing (Rec. 381). On December 22nd, 1939, respondents filed an answer to the petition for re-hearing (Rec. 391). On January 9th, 1940, the petition for rehearing was denied.

The *law* as formulated and applied by the majority opinion of the court may be analyzed and outlined as follows:

1. The majority of the court ruled that the picketing by the defendant union of retail bottled milk stores in Chicago, Illinois, selling to the public milk originally produced on Wisconsin farms constituted a restraint of interstate commerce or trade within the meaning of the Sherman Act and Clayton Act.

2. The majority of the court ruled that the picketing by the defendant union of retail milk stores in Chicago, Illinois, constituted an activity or an unlawful conspiracy within the meaning of the Sherman Act and the Clayton Act.

3. The majority of the court ruled that the attempted unionization of the milk wagon drivers in the entire milk delivery industry in Chicago, Illinois, constituted an attempt to monopolize interstate commerce within the meaning of the Sherman Act and Clayton Act.

4. The majority of the court ruled that the attempts by the defendant union to unionize the Lake Valley Farm Products, Inc., and that the dispute between the plaintiff, Amalgamated Dairy Workers, Local Industrial Union No. 819, and the defendant, Milk Wagon Drivers Union, Local 753, did not constitute a labor dispute within the meaning of the Norris-LaGuardia Act.

5. The majority of the Court ruled that the picketing by the defendant union of the retail milk stores in Chicago, Illinois, constituted a secondary boycott and that such secondary boycott deprived the defendant union of the protection of the Norris-LaGuardia Act and prevented the application of the Norris-LaGuardia Act to the case at bar.

6. The majority of the court ruled that the defendants' constitutional right to free speech under the due process clause of the 14th Amendment to the Federal Constitution did not permit them to conduct peaceful picketing of retail stores in the City of Chicago.

The minority, as shown by the dissenting opinion of Justice Treanor in substance adopted the exact antithesis of the rules or conclusions found by the majority of the court as outlined above.

Reasons Relied on for the Allowance of the Writ.

1. The decision of the Circuit Court of Appeals to the effect that the economic dispute between the defendant union on the one hand and the plaintiff dairy and the plaintiff union on the other hand is not a labor dispute within the meaning of Section 13 of the Norris-LaGuardia Act is squarely in conflict with and contrary to the decisions of this Court in:

Lauf v. *Shinner & Co.*, 303 U. S. 323 at 329, 330 (1938);

New Negro Alliance v. *Sanitary Grocery*, 303 U. S. 552 at 559, 562 (1938);

Fur Workers Union v. *Fur Workers Union*, 84 Law Ed. 247 (December 11th, 1939).

In addition, this decision of the Circuit Court of Appeals on this question of "labor dispute," is in conflict with the decisions in other circuits:

Levering & Co. v. *Morrin*, 71 Fed. 2nd 284, 286, 287 (C. C. A., 2, 1934);

Grace Company v. *Williams*, 96 Fed. 2nd 478, 481 (C. C. A., 8, 1938);

Donnelly Company v. *International Ladies Workers' Union*, 99 Fed. 2nd 309 (C. C. A. 8, 1938).

This decision of the Circuit Court of Appeals is also squarely contrary to an earlier case in the same circuit:

Blankenship v. *Kurfman*, 96 Fed. 2nd 450, 455, 456 (C. C. A. 7, 1938).

2. The decision of the Circuit Court of Appeals that the picketing by defendant Chicago local union of retail bottled milk stores in Chicago, Illinois, constituted such a burden on interstate commerce in milk originally produced on Wisconsin farms that amounted to a restraint of interstate commerce within the prohibitions of the Sherman and Clayton Acts was squarely in conflict with and is contrary to the decisions of this Court in:

Levering & Co. v. *Morrin,* 289 U. S. 103 (1933);
United Leather Workers v. *Herkert Co.,* 265 U. S. 457 at 469, 471 (1924);
United Mine Workers v. *Coronado Coal Co.,* 259 U. S. 344 at 403, 407, at 408, 410-411 (1922);
Industrial Association v. *United States,* 268 U. S. 64, at 77-78, 80-82, 84 (1925).

3. The decision of the Circuit Court of Appeals in holding that the unionization of all the milk wagon drivers for dairies in the City of Chicago, Illinois, would constitute a monopoly of interstate trade or commerce in violation of the provisions of the Sherman and Clayton Acts is squarely in conflict with and is contrary to the decision of this court in:

Appalachian Coals, Inc. v. *United States,* 288 U. S. 344, at 359, 360 (1933);
Standard Oil Co. v. *United States,* 221 U. S. 1 at 56-58, 66 (1911);
United States v. *American Tobacco,* 221 U. S. 106 at 178, 180 (1911);
National Association of Window Glass Manufacturers v. *United States,* 263 U. S. 403 (1923).

4. The decision of the Circuit Court of Appeals for the Seventh Circuit that the picketing of retail bottled milk

stores in Chicago constituted such a burden on interstate commerce in milk that amounted to a restraint of interstate commerce within the prohibitions of the Sherman and Clayton Acts was squarely in conflict with and is contrary to the decision of another Circuit Court of Appeals, namely, *Leader* v. *Apex Hosiery Co.*, 108 Fed. 2nd 71, decided by the United States Circuit Court of Appeals for the Third Circuit (rehearing denied, December 27th, 1939) now pending on the docket of this Court as No. 638, October term, 1939, upon petition for certiorari.

5. The decision of the Circuit Court of Appeals for the Seventh Circuit that a Federal Court is not deprived of jurisdiction by the Norris-LaGuardia Act to enter an injunction restraining peaceful picketing if such peaceful picketing amounts to a so-called "secondary boycott" is squarely in conflict with and is contrary to the decision of the United States Circuit Court of Appeals for the Third Circuit in the case of *Wilson & Company* v. *Birl*, 105 Fed. 2nd 948 (1939).

6. The decision of the Circuit Court of Appeals that if a defendant labor union involved in a labor dispute within the meaning of Section 13 of the Norris-LaGuardia Act is guilty of a conspiracy to restrain interstate commerce within meaning of Sherman Act it may even be enjoined from the peaceful picketing specifically protected by Section 4 of the Norris-LaGuardia Act is contrary to the express provisions of Section 5 of the Norris-LaGuardia Act. Section 5 in substance deprives every United States court of jurisdiction to issue an injunction on the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an "unlawful combination" because of the doings in concert of the acts enumerated in Section 4 of the Norris-LaGuardia Act.

There is no precise or even substantially analogous decision by this Court upon this question in so far as we are aware.

The decisions of the lower Federal courts are apparently in conflict upon this problem.

For *decisions* that in substance *hold* that Section 5 of the Norris-LaGuardia Act precludes the issuance of an injunction to restrain peaceful picketing even though the *facts* show that the activities of the labor union of which peaceful picketing is only a part do restrain and burden interstate commerce, see:

International Brotherhood of Teamsters v. *International Brotherhood of United Brewery Workers,* 106 Fed. 2d 871, at 876 (C. C. A., 9th, reh. denied Nov. 8, 1939, rev'g 25 Fed. Supp. 870).

Wilson and Company v. *Birl,* 105 Fed. 2nd, 948, (C. C. A. 3rd, July 10th, 1939).

Grace Company v. *Williams,* 96 Fed. 2nd, 478 (C. C. A. 8th, 1939).

Terrio v. *S. N. Nielsen Co.,* 30 Fed. Supp. 77, at 81 (D. C. La., Nov. 2, 1939).

Pauly Jail Bldg. Co. v. *International Ass'n. of Bridge Workers,* 29 Fed. Supp. 15, (D. C. Mo., Aug. 3, 1939).

Houston Lines Co. v. *Local Union,* 24 Fed. Supp. 619, (D. C. Okla., 1938).

Diamond Hosiery v. *Leader,* 20 Fed. Supp. 467, at 469-470, (D. C. Pa., 1937).

For decisions *contra,* that apparently hold that interference by a labor union with interstate commerce warrants the entry of an injunction even against peaceful picketing, see

Mayo v. *Dean,* 82 Fed. 2d, 554, (C. C. A. 5th, 1936).

Fehr v. *Baking Co.,* 20 Fed. Supp. 691 (D. C. La., 1937).

This important problem of "conflict" between the Sherman Act and the Norris-LaGuardia Act should be resolved and determined by this court. The recency of many of the foregoing decisions indicates the increasing importance of an early and conclusive determination of this vital Federal problem.

7. The decision of the Circuit Court of Appeals to the effect that the defendant union activities in peacefully picketing retail stores were illegal activities, should be overruled by this court and this court should adopt the meaning of Section 20 of the Clayton Act advanced by Mr. Justice Brandeis in his dissenting opinion in *Duplex Press Co.* v. *Deering,* 254 U. S. 443.

The reasons justifying change by this court in its interpretation of Section 20 of the Clayton Act are found in the enactment of the Norris-LaGuardia Act in 1932 and other Federal legislation either expressly or impliedly recognizing and approving unionization, and the broadening of the scope of permissible labor union activity.

8. The decision of the Circuit Court of Appeals to the effect that a Federal equity court may by injunction restrain individual members of a labor union from carrying a banner or placard on a public highway in front of a store selling the non-union product for the purpose of advertising or communicating to the public the information that the store is selling such non-union product is not in accord with the principles and the extent of the guaranteed rights of free speech within the meaning of the due process clause of the 14th Amendment to the Federal Constitution as formulated and expressed by this court in the cases of: *Schneider* v. *Town of Irvington,* 60 Sup. Ct. Rep. 146, 150 (Nov. 22, 1939); *Senn* v. *Tile Layers Union,* 301 U. S. 468 at 478 (1937); *Hague* v. *C. I. O.,* 307 U. S. 496 (1939); *Lovell* v. *City of Griffin,* 303 U. S. 444 at 450-452 (1938).

9. The decision of the Circuit Court of Appeals to the effect that the Federal Anti-Trust Laws apply to labor unions should be overruled by this court.

Logically, this reason should be the first reason advanced to this court in this petition. But in conformity with the general precept that a broad problem of this kind wherein counsel ask this court to overrule numerous prior decisions should not be determined if the cause may be disposed of on an issue less broad, we have left it for the last reason.

This contention has been argued before this court in *United States* v. *Borden,* 84 Law Ed. 143, at 154 (1939), where this court held that the problem was not open on the appeal. In short, it is respectfully suggested that the "Legislative History" of both the Sherman Act and Section 6 of the Clayton Act of 1914 conclusively demonstrates that the Federal Anti-Trust Laws are not applicable to labor unions and their activities. In our brief we shall not "argue" at length this question but we do rely upon this question as *one* of the reasons for the granting of certiorari herein.

National Importance of Federal Questions Presented Herein.

The decision by the Circuit Court of Appeals concerns several Federal problems of vital national concern: First, the construction and application of the Federal Anti-Trust Laws to the operation, the goals or purposes and the activities of labor unions; second, the construction and application of the Norris-LaGuardia Act to the operation, the goal and the activity of labor unions.

It is respectfully suggested that the decision of the majority of a sharply divided court upon problems whose

determination is not only vital to the continued growth of labor unions but is important even to the existence thereof—is a problem of such *national* importance as merits full consideration and determination by this court.

To hold that a local labor union by picketing a store in the metropolitan City of Chicago is guilty of a restraint of interstate trade within the meaning of the Federal Anti-Trust laws—which may even subject the picketers to *criminal* prosecution—is a departure from the purposes of the Anti-Trust laws. It is an unwarranted application of the Anti-Trust laws that may result in the strangling of not only this labor union but of many other labor unions similarly situated. This construction would make almost *every* strike in most businesses a violation of the Federal Anti-Trust Laws.

In addition, to permit this narrow construction of the labor dispute provisions of the Norris-LaGuardia Act to stand is to return the Federal Courts into the business of Government by injunction in disregard of the economic and social history leading up to the enactment of the Norris-LaGuardia Act. The same Circuit had previously committed a similar error which this court corrected in its decision in *Lauf* v. *Schinner & Co.*, 303 U. S. 552. It is respectfully urged that *repetition* of this latter error again calls for exercise of this court of its supervisory power.

PRAYER.

Wherefore, your petitioners and each of them respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Seventh Circuit demanding that court to certify and to send to this court for review and determination on a day certain to

be therein named a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 6900, *Lake Valley Farm Products, Inc., a corporation, et al.* v. *Milk Wagon Drivers' Union, Local 753, et al.*, and that such judgment of the Circuit Court of Appeals for the Seventh Circuit may be reversed by this Honorable Court and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

MILK WAGON DRIVERS UNION, LOCAL 753,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, A VOLUNTARY ASSOCIATION,
ROBERT G. FITCHIE,
JAMES KENNEDY,
STEVE SUMNER,
FRED C. DAHMS,
F. RAY BRYANT,
ALVIN F. RICHARDS AND
JOSEPH L. PATTERSON,
Petitioners,

By ABRAHAM W. BRUSSELL,
Attorney for Petitioners.

DAVID A. RISKIND,
ABRAHAM W. BRUSSELL,
Of Counsel.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.

Opinion of Court Below.

The United States District Court for the Northern District of Illinois, Eastern Division, wrote no opinion but it made findings of fact and conclusions of law (R. 247-251). Included therein by reference (R. 250) were the various findings of fact made in the Master's Report (R. 203-223).

The opinion of the United States Circuit Court of Appeals for the 7th Circuit (R. 359-378) is reported in 108 Fed. 2nd. 436-448, Advance Sheets for February 5, 1940.

II.

Jurisdiction.

1. The statutory provision believed to sustain the jurisdiction of this Court to review the judgment of the Circuit Court of Appeals is Section 240 (a) of the Judicial Code as amended by the Act of February 13th, 1925, Chap. 229, Section 1; 43 Stat. 938 [Title 28 U. S. C. A. Sec. 347 (a)].

Dates of Judgment and Denial of Petition for Rehearing.

The decree of the Circuit Court of Appeals for the Seventh Circuit was entered on November 29th, 1939 (R. 360). The petitioners' petition for rehearing was filed on December 14th, 1939 (R. 380) and denied on January 9th, 1940 (R. 397).

This petition for writ of certiorari is timely within the requirements of the Act of February 13th, 1925, Chap. 229, Sec. 8; 43 Stat. 940 as found in Title 28 U. S. C. A. Sec. 350. In addition, since the petitioners filed a petition for rehearing, the statutory period of time within which the application to this Court for a Writ of Certiorari may be made, begins to run from the date on which the petition for rehearing was denied, namely, January 9th, 1940. (*Citizens Bank of Michigan City* v. *Opperman,* 249 U. S. 448; *Gypsy Oil Company* v. *Escoe,* 275 U. S. 498; *Morse* v. *United States,* 270 U. S. 151; *Aspen Mining Co.* v. *Billings,* 150 U. S. 31; Title 28, U. S. C. A. Sec. 350.)

III.

Statement of Case.

A summary statement of the facts has already been made in the preceding petition for certiorari under pages 2-7, which in the interest of brevity is hereby adopted and made a part of this brief.

IV.

Specification of Errors To Be Urged.

Petitioners urge as errors all of the contentions advanced by them and sustained in the District Court of the United States for the Northern District of Illinois, Eastern Division, and urged by them, and rejected by the majority of the Circuit Court of Appeals for the Seventh Circuit. The dissenting minority of the Circuit Court of Appeals sustained all of the contentions advanced by petitioners with the sole exception of the contention that the Anti-Trust laws are not applicable to labor unions and their activities.

The Circuit Court of Appeals erred in:

1. Holding and ruling that the Norris-LaGuardia Act did *not* prohibit the issuance of an injunction to restrain peaceful picketing by a craft union of retail milk stores selling to the public the bottled milk products of a dairy which refused to sign a union contract with the craft union and which dairy caused the milk to be delivered to the retail stores by members of a competing industrial union.

2. Holding and ruling that the peaceful picketing by a Chicago local union of retail milk stores in Chicago, Illinois, selling bottled milk to the public constituted a restraint of interstate commerce in milk within the prohibitions of the Sherman Act because the milk was originally produced on Wisconsin farms.

3. Holding and ruling that attempts by a Chicago local craft union to unionize all Chicago non-union dairy drivers of milk wagons constituted a monopoly or attempt to monopolize interstate trade or commerce within the prohibitions of Section 2 of the Sherman Act.

4. Holding and ruling that the Federal Anti-Trust laws were applicable to labor unions and their activities.

5. Holding and ruling that the petitioners' rights to free speech under the due process clause of the 14th Amendment to the Federal Constitution did not prevent a Federal Equity Court from issuing an injunction to restrain petitioners from carrying a banner or placard on the public highway.

V.

SUMMARY OF ARGUMENT.

A.

By virtue of the provisions of the Norris-LaGuardia Act a Federal District Court has no jurisdiction to issue an injunction restraining peaceful picketing of retail milk stores by an A. F. of L. craft union where the object of the peaceful picketing is to enlist public support for the craft union in its attempt to unionize the dairy whose products are delivered to the store by the members of a C. I. O. industrial union which is competing with the craft union.

B.

Peaceful picketing of Chicago retail milk stores by a Chicago local craft union for the purpose of unionizing a Chicago dairy is not a restraint of interstate trade or commerce within the prohibitions of Section 1 of the Sherman Act even though there is a decrease in the sales of the bottled milk which was originally produced on Wisconsin farms.

C.

Attempts by a Chicago Milk Wagon Drivers' Union to unionize all Chicago non-union dairy drivers of milk wagons did not constitute a monopoly or an attempt to monopolize within the prohibitions of Section 2 of the Sherman Act.

D.

Section 20 of the Clayton Act of 1914 legalizes the activities of a craft labor union that seeks to enlist public support in an economic dispute over the signing of a union contract with a non-union dairy by means of placards or banners carried by union members on the public highway in front of retail milk stores selling to the public the products of such non-union dairy which are delivered to the store by members of a competing industrial union.

E.

The due process clause of the 14th Amendment to the Federal Constitution prevents a Federal equity court from restraining and enjoining union members and working men from carrying a banner or placard on the public highways as a means of communicating information to the public in an attempt by the union to have the public assist the union in its economic controversy with a non-union dairy and with a competing union.

VI.

ARGUMENT.

A.

By virtue of the provisions of the Norris-LaGuardia Act a Federal District Court has no jurisdiction to issue an injunction restraining peaceful picketing of retail milk stores by an A. F. of L. craft union where the object of the peaceful picketing is to enlist public support for the craft union in its attempt to unionize the dairy whose products are delivered to the store by the members of a C. I. O. industrial union which is competing with the craft union.

Section 13 of the Norris-LaGuardia Act defines "labor dispute." See Appendix, pp. 5-6.

The majority and minority of the Circuit Court of Appeals sharply divided on the problem whether the controversy in the case at bar constituted a "labor dispute" within the meaning of Section 13 of the Norris-LaGuardia Act.

We urge that the *minority* correctly found this was a "labor dispute" within the meaning of Section 13.

Sub-sections (a), (b) and (c) of Section 13 must all be considered in determining the existence of a "labor dispute."

First, consider sub-section (a). That refers to the *case* growing out of a labor dispute. What persons may the *case* involve? The case at bar involves persons who are engaged in the same industry. All these three plaintiffs and all of the defendants, have direct interests in the milk industry. At the very least, all of them have indirect

interests. And all of them have direct or indirect interests in the *dispute* concerning the unionization of the plaintiff dairy, *i. e.* the unionization of the vendors of the plaintiff dairy and the vendors' employees.

Also the *dispute* (not the case) is between one employer, *i. e.*, the Lake Valley Dairy, and an association of employees in the same industry. Under the provisions of this sub-section (a), if there were a dispute between plaintiff Lake Valley Dairy or the association to which it belonged and the union dairies in the City of Chicago, even that would be sufficient to constitute a labor dispute within the meaning of this sub-section. Also, the dispute between the plaintiff C. I. O. Union and the defendant A. F. of L. Union, is a dispute between two associations of employees.

Next, taking up the last clause in sub-section (a). We have the broad definition that a case shall be held to involve or grow out of a labor dispute when the case involves "any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined)." Accordingly, we must next look to sub-sections b and c in order to determine the extent of these two classes.

Under sub-section b, a person is considered as one participating in, or interested in a "labor dispute" if relief is sought against him and if he is engaged in the same industry in which the dispute occurs, or if he has a direct or indirect interest therein, *i. e.*, the dispute, or if he is a member of any association composed in whole or in part of employers or employees engaged in such industry. Let us apply this to the facts in the case at bar.

Plaintiff, Lake Valley Dairy, was the object of certain relief sought by the defendant union in an attempt to organize such dairy. The dispute centers around the ques-

tion of unionization of plaintiff dairy. The plaintiff dairy was a member of a milk dealers association. The defendant union is also engaged in the milk industry. The defendants personally, were officers and members of an employees' association engaged in such milk industry. Accordingly, the case at bar falls within Sub-section (b) too.

Next let us consider the broad definition of "labor dispute" as given by sub-section c. By sub-section c, the term "labor dispute" includes *any controversy* concerning the following:

(1) Terms or conditions of employment;

(2) Concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment.

And the statute emphasizes that the relationship of employer and employee between the disputants is not necessary in order to make the controversy a labor dispute.

Reference to "any controversy" is made regardless of whether or not the disputing parties stand in the proximate relation of employer and employee—the controversy need concern ONLY the specified subject matter.

Apply this broad standard to the case at bar. Certainly the defendant union sought to change the terms and conditions of the plaintiff Lake Valley Dairy's arrangement with its vendors and their helpers. It sought to have such vendors and helpers limit their work to the regular union hours and to receive as return therefor the regular union scale. The same is also true of the dispute between the defendant union and the Wagner Dairy.

Next, can it be disputed that the defendant union was involved in a controversy concerning the *representation* of the vendors and their helpers in negotiating terms and conditions of employment? Similarly with changing terms and conditions of employment?

Hence as an original problem the facts in the case at bar clearly fall within the express standards formulated by the Federal Congress. Both the Master and Chancellor found on the facts and the law that the controversies in the case at bar between the plaintiffs and defendants constituted a "labor dispute" within the meaning of Section 13.

In considering the Norris-LaGuardia Act, attention must also be given to the "public policy" of the act.

Section 1 commands that no restraining order or injunction be issued contrary to the public policy declared in the Act. Section 2 states the public policy of such legislation.

Our facts show that the members of the defendant union, for their mutual aid and mutual self protection, are seeking to unionize the Lake Valley Dairy, as they sought to unionize the Wagner Dairy. Such organization activities were for the ultimate purpose of improving the working conditions of the members of the defendant union. But in addition defendants seek to protect the members of the defendant union in their present achievements. Let us assume that various dairy employers in the City of Chicago find that they can make more profit for themselves by paying less money for delivery costs as a result of adopting a vendor system whereby such vendors and their helpers receive "wages" considerably lower than that received by the members of the defendant union. Does it require much argument to demonstrate that the members of the defendant union will not be able to maintain their

higher wage scale and less hours and their better working conditions? It is not a question of whether any particular individual believes the members of the defendant union are or are not justified in attempting to maintain a high wage scale for themselves. No individual may dogmatically say that the members of the defendant union are unjustified in competing for higher wages or better working conditions. Defendants have the undisputed right in a competing market to attempt to obtain wages and hours that are most appealing to them. Employers of labor in their dairies also have the legal right to attempt to compete in the sense of trying to pay as low wages and work their men as long hours as they find they are able to do in such competing market. But this is economic competition. The desirable social goal is to permit competition on an equal competitive basis. Organization on the part of workers tends to put them on equal footing with those who "employ" them.

The Norris-LaGuardia Act was intended to limit the Federal District Courts in the issuing of injunctions in matters arising out of these economic disputes between working men and employers. Too often the Federal Courts had interfered by injunction and by so doing deciding the issue in favor of the employer.

With respect to the purpose of the act, Mr. Justice Roberts of this court in *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552, stated:

> "The legislative history of the Act demonstrates that it was the purpose of Congress further to extend the prohibitions of the Clayton Act respecting the exercise of jurisdiction by Federal Courts and *to obviate the results of the judicial construction of that Act.*" 303 U. S. at p. 562. (Italics ours.)

The committee reports leading to the enactment of the Norris-LaGuardia Act indicate the clear legislative intent to change the law as it was evidenced by the Supreme Court decisions rendered prior to *1932.* Accordingly, the decisions of the Supreme Court of the United States with regard to labor disputes, rendered prior to 1932, do not have any bearing in the determination of the issues in the case at bar.

See H. R. Rep. No. 669, 72nd Congress 1st Session (1932).

In *New Negro Alliance* v. *Sanitary Grocery Co.,* 303 U. S. 552 (1938) the defendant operated grocery stores employing both white and negro employees. The plaintiff corporation was composed of colored persons organized for the mutual improvement of its members and for the promotion of civic and educational enterprises for its members. None of the plaintiff's members were engaged in a business competing with the defendant. The plaintiffs, officers of the corporation, requested the defendant to adopt a policy of employing negro clerks in certain of its stores in the course of personnel changes. The defendant ignored the request. The plaintiffs caused a person to patrol in front of one of defendant's stores carrying a placard reading "Do your part! Buy where you can work! No negroes employed here!" It caused a similar patrol of two other stores. There was no violence or intimidation. The Trial Court and the Court of Appeals of the District of Columbia, found there was no labor dispute and therefore entered an injunction restraining the plaintiffs, among other things, from picketing the stores. The Court of Appeals found that there was no labor dispute within the meaning of the Norris-LaGuardia Act because it did not involve terms and conditions of employment, wages, hours, unionization or betterment of

working conditions. Mr. Justice Roberts holds that there was a labor dispute within the meaning of the provisions of Section 13, and therefore finds that the District Court erred in not complying with the "conditions precedent" of Section 7 of the Norris-LaGuardia Act before granting *any* injunction.

In answer to the stores' argument that this was simply a racial dispute, the Court held that the Norris-LaGuardia Act does not concern itself with the background or the motives of the disputes. The Court said:

> "There is no justification in the apparent purposes or express terms of the Act for limiting its definition of labor disputes and the cases arising therefrom by excluding those which arise with respect to discrimination in terms and conditions of employment based upon differences of race or color." 303 U. S. at p. 561.

Certainly in the case at bar, the desire by the defendant union and the members thereof, for fair and equitable conditions of employment of *themselves,* is more closely related to the Lake Valley's dairy business than was the situation in this *New Negro Alliance* case. In that case the Court held that a desire on the part of the plaintiffs to have the defendant employ members of the Negro race "generally," involved such clash of economic interests as fell within "any controversy concerning terms and conditions of employment, etc.," provision of the Norris-LaGuardia Act. If the object of the New Negro Alliance in seeking to have members of the Negro race employed was a labor dispute involving "terms and conditions of employment" within the meaning of Section 13, then a *a fortiori* the desire of the members of the defendant union to either provide work for such of its members

who were unemployed, or the desire to increase the influence of the union by taking in new members from the vendors and their helpers, and the desire to protect their hard-earned high wage scale and standard of living, was sufficient controversy concerning the clash of economic interests between the plaintiff non-union dairy and the defendant union.

In *Lauf* v. *Schinner & Company*, 303 U. S. 323, Mr. Justice Roberts defined "labor dispute." Defendant corporation maintained five meat markets in Milwaukee, Wisconsin. Plaintiffs were an unincorporated labor union and its business manager. None of the defendant's employees were members of the plaintiff union. The plaintiff demanded that the defendant require its employees to become members of the plaintiff union, as a condition of their continued employment by the defendant. Plaintiff union had not been chosen by defendant's employees to represent them in any matter connected with the defendant; defendant's employees refused to join the plaintiff union. The plaintiff sought to coerce the defendant to require its employees to join the plaintiff union and to accept it as their exclusive bargaining agent and as a condition of their continued employment. In order to attain such result, the plaintiff caused false and misleading signs to be placed in front of the defendant's stores, caused persons who were not defendant's employees to picket these stores, falsely accused the defendant of being unfair to organized labor and exercised threats and intimidation to prevent defendant's customers and patrons from purchasing at defendant's markets. Suit was brought in the Federal District Court on the ground of diversity of citizenship. The District Court held that no labor dispute existed between the plaintiffs and the defendant as defined both by the Wisconsin Anti-Injunction Act and

the Federal Norris-LaGuardia Act, and restrained the acts of the plaintiffs previously stated. The Circuit Court of Appeals affirmed this decree (90 Fed. (2d) 250) in following the law of the case adopted on an earlier appeal taken from the issuance of an interlocutory injunction (as reported in 82 Fed. (2d) 68). The Supreme Court reversed. It held first a labor dispute existed within the meaning of the Wisconsin Anti-Injunction Act (303 U. S. at pages 327-328); second, the District Court erred in granting an injunction in the absence of findings which the Norris-LaGuardia Act makes pre-requisite to the exercise of jurisdiction (303 U. S. pages 329-330); third, that the Circuit Court of Appeals erred in holding that the declaration of policy under the Norris-LaGuardia Act narrowed the definition of a labor dispute found in Section 13 of the Norris-LaGuardia Act. Accordingly, the judgment was reversed and the cause remanded for further proceedings in conformity with the opinion of the Court.

Apply the principles to the case at bar. Even though a labor association has none of its members as employees of the individual employer, and even though the employees of such employer are opposed to having the labor association act as their representative, there nevertheless is a labor dispute within the meaning of the Act. It does not matter that the labor union asks the employer to coerce his employees to join it and accept it as its exclusive bargaining agent, contrary to their will. There is a labor dispute even though the labor union seeks to compel the employer to require his employees to accept a closed shop contract. Is not the economic position of the defendant labor union and its members more closely imperiled by the business carried on by the plaintiff dairy than was the fact in the case of *Lauf* v. *Schinner Company?* The economic bases of the dispute are much clearer and stronger in the case at bar than they were in *Lauf* v. *Schinner.*

In the case at bar, the defendant union was directly interested in the hours and wages and working conditions of the employees of the Lake Valley Dairy and Wagner Dairy. In the *Lauf* v. *Schinner* case, it is simply a question of representation. Our case is accordingly more clearly within the definition of the Statute.

In the case of *Levering & Company* v. *Morrin,* 71 Fed. (2nd) 284 (C. C. A. 2, 1934) plaintiff association wished to maintain an open shop. Defendant labor union, by sympathetic strikes, persuasion, picketing, etc., of various third persons sought to bring economic pressure on the plaintiff to change his method of doing business from an open shop to a closed shop by appeals to those third persons who have business relationships with the plaintiff. It is held that the controversy between the plaintiff and defendant union is a labor dispute. The union's attempt to obtain a closed shop in that case is analogous in the union's attempt to obtain a union shop in the case at bar—that is to say, to cause the Lake Valley Dairy and the Wagner Dairy to operate on a union shop basis. The purposes are to benefit the defendant union members by causing employment of those union members now unemployed, to protect and preserve the present union scale, working conditions, and hours of labor by preventing inroads due to disastrous competition, and by making the defendant union stronger by increasing the number of men engaged in the milk industry and by incorporating them as members of the defendant union.

This Court denied *certiorari* of this decision in 293 U. S. 595 (1934).

In the case of *Senn* v. *Tile Layers Union,* 301 U. S. 468 (1937) this Court in an opinion by Mr. Justice Brandeis, held that where the defendant union sought to require the plaintiff employer to sign a contract requiring among other

things, a covenant by the employer to refrain from participating in manual labor, that such controversy was a labor dispute; and therefore the provisions of the Wisconsin Anti-Injunction Act were applicable; so that the Wisconsin Supreme Court in finding a labor dispute did exist and denying injuctive relief, was not violating the plaintiff's rights under the Federal Constitution. Mr. Justice Brandeis found that both the means (*i. e.*, picketing and publicity) and the end *i. e.*, the condition that the employer refrain from manual labor, were not violative of the Federal Constitution.

See also *Grace Company* v. *Williams,* 96 Fed. (2d) 478 (C. C. A. 8, 1938) for a fact situation analogous to the case at bar where the Court held that the economic controversy *did* constitute a labor dispute.

Cf. *Blankenship* v. *Kurfman,* 96 Fed. (2d) 450, 455, 456 (C. C. A. 7, 1938).

Section 5 of the Norris-LaGuardia Act prohibited the issuance of an injunction to restrain peaceful picketing even though defendants were combining to restrain interstate commerce.

This Court has never passed upon the problem of construing the meaning of Section 5 of the Norris-LaGuardia Act. (See Appendix, p. 3.)

The statute is clear to the effect that so long as persons participating or interested in a labor dispute are engaged in acts or performing activities that fall within the provisions of section 4 of the Norris-LaGuardia Act, no United States Court shall have jurisdiction to issue an injunction on the ground that such acts amounted to "an unlawful combination or conspiracy." As a matter of literal meaning, the statute includes combination or conspiracy which

is claimed to be unlawful on the ground that it is a combination in restraint of trade under the Sherman Act.

The lower court decisions are conflicting. The great weight of authority follows the literal meaning of this section. The decision in the case of *Wilson Co.* v. *Birl,* 105 Fed. 2nd, 948 (which affirmed the decision of the District Court as reported in 27 Fed. Sup. 915), is substantially to the effect that peaceful picketing by a labor union in the course of a labor dispute may not be enjoined by the federal court even though such peaceful picketing results in a restraint of trade within the meaning of the Sherman Act. See 105 Fed. 2nd at 952 and 28 Fed. Sup. at 918.

In *International Brotherhood of Teamsters* v. *International Union of United Brewery Workers,* 106 Fed. 2nd, 871 (C.C.A., 9, rehearing denied Nov. 8, 1939, reversing 25 Fed. Sup. 870), in substance it was held the labor union activities in a labor dispute expressly described by Section 4 of the Norris-LaGuardia Act could not be restrained by injunction in the Federal Court even though such activities resulted in a restraint or interference with interstate commerce.

See 106 Fed. 2nd at 876.

Other cases where courts have held that the existence of restraint on interstate commerce as a result of union activity does not warrant the enjoining of the particular union activity falling within the purview of Section 4 of the Norris-LaGuardia Act are as follows:

Grace Company v. *Williams,* 96 Fed. 2nd, 478 (C. C. A., 8, 1939);

Diamond Hosiery v. *Leader,* 20 Fed. Sup. 467 at 496, 470 (D. C. Penn. 1937);

Houston Motor Lines v. *Local Union,* 24 Fed. Supp. 619 (D. C. Okla.);

Pauly Jail Building v. *International Ass. of Bridge Workers,* 29 Fed. Supp. 15 (D. C. Mo. 1939);
Terrio v. *S. N. Nielsen Co.,* 30 Fed. Supp. 77 at 81 (D. C. La. 1939).

The authorities opposed to the foregoing decisions are:

Mayo v. *Dean,* 82 Fed. 2nd 554 (C. C. A. 5, 1936);
Fehr Baking Co. v. *Bakers Union,* 20 Fed. Supp. 691 (D. C. La. 1937).

The Norris-LaGuardia Act deprives a Federal District Court of jurisdiction to enjoin peaceful picketing by a union in a labor dispute even though such peaceful picketing was designated as a "secondary boycott" prior to the passage of the Norris-LaGuardia Act.

The majority of the Circuit Court of Appeals held that the defendants' activities of peacefully picketing the retail milk stores were restrainable because they constituted a secondary boycott. The use of the term "secondary boycott" by the Circuit Court of Appeals is an attempt to follow the decision of cases such as *Duplex Press* v. *Deering,* which the Norris-LaGuardia Act specifically sought to repeal. The decision in *Wilson Co.* v. *Birl,* 105 Fed. 2nd, 48, is squarely opposed to the decision of the majority of the Seventh Circuit. In addition the decision in the other cases we have cited *supra* are in substance also opposed to the ruling of the Circuit Court of Appeals for the Seventh Circuit on this point.

Under the literal meaning of the Norris-LaGuardia Act, the Federal Court could not restrain the acts specifically described in Section 4. (See Appendix pp. 2-3.) If defendants' acts fell into the categories of Section 4 it would not make any difference that their acts were such that

under the older decisions could be described as amounting to a secondary boycott. This is clearly shown in the report of the then Representative LaGuardia.

See H. R. Rep. No. 669, 72nd Cong. 1st session (1932) at p. 10.

B.

Peaceful picketing of Chicago retail milk stores by a Chicago local craft union for the purpose of unionizing a Chicago dairy is not a restraint of interstate trade or commerce within the prohibitions of Section 1 of the Sherman Act even though there is a decrease in the sales of the bottled milk which was originally produced on Wisconsin farms.

The facts concerning interstate commerce are stated in the opinion of the Court.

There is no showing in the Record that the amount of milk shipped from Wisconsin to respondent, Lake Valley Farm Products, Inc., was decreased as a result of the picketing. The respondent, Lake View Co-Operative of Watertown, Wisconsin, sold its milk to various other dairies in the City of Chicago.

The learned opinion of the dissenting Justice Treanor in this case (R. 370) first discusses the finding and conclusion of the trial court "that the defendants' activities did not burden or affect interstate commerce within the prohibitions of the Federal Anti-Trust laws." His discussion at Rec. 370-376 touches upon the decisions of this Court most strongly relied upon by your petitioners. To avoid repetition we respectfully adopt the reasoning and discussion of Justice Treanor and respectfully refer the Court to the indicated portions of his opinion.

The decisions of this Court upon which we so rely are as follows:

Levering & Co. v. *Morrin,* 289 U. S. 103 (1933).
United Leather Workers v. *Herkert,* 265 U. S. 457, 469, 471 (1924).
United Mine Workers v. *Coronado Coal Co.,* 259 U. S. 344, 403, 407, 408, 410-411 (1922).
Industrial Association v. *United States,* 268 U. S. 64, 77-78, 80-82, 84 (1925).

As one of the reasons for the granting of certiorari it is urged that the 7th Circuit decision on the interpretation of the Sherman Act is squarely in conflict with the decision by the Circuit Court of Appeals for the Third Circuit decided on the same day, November 29th, 1939, in the case of *Leader* v. *Apex Hosiery Co.,* 108 Fed. 2nd, 71 (C.C.A., 3, rehearing denied Dec. 27, 1939, Advance Sheets of Jan. 29, 1940). The restraint in that case consisted of the activities of a labor union in causing a sit-down strike in the employer's factory and physically preventing the employer from shipping a substantial amount of its finished product to fulfill orders, eighty per cent of which were from customers outside the State of Pennsylvania. It was held in that case that as a matter of law, the trial court should have ruled that there was no restraint of trade within the meaning of the Sherman Act as construed by this Court in numerous decisions.

For the purpose of conciseness we refer to this Circuit's persuasive discussion and analysis of the decisions of this Court upon which we rely under this present heading.

In the case at bar there is no showing that a single quart of milk less was carried in interstate commerce as a result of petitioner's picketing that would have been carried in interstate commerce had there been no picketing. The

only difference between the two decisions is the difference between production of goods in the state in question, and the consumption of goods in the state in question. The principles of the Sherman Act do not depend for their application upon the question whether restraint comes in the shipping outside of the state or upon the coming of goods into the state. These two cases are squarely irreconcilable. Their conflict upon this vital question of Federal law is adequate ground in itself for review by this Court to clarify the conflict between the Court Courts of Appeals.

The defendant union was a local union limited to the City of Chicago and adjacent environs. The activity of the Union was local—it was limited to picketing in the City of Chicago. The purpose of the union was local, *i.e.*, the unionization of Chicago dairies. The source of the milk handled by the dairy was immaterial so far as the defendant union was concerned. The economic controversy would have continued regardless whether the milk was produced in Illinois or whether it was produced in New York and shipped to Illinois. The only basis for dispute was the fact that plaintiff, Lake Valley Farm Products, Inc. was not a union dairy insofar as defendant union was concerned.

The effect of the picketing insofar as interstate commerce was concerned, so far as the record shows, was entirely indirect, remote and removed from the traffic in interstate commerce. There was no interference with transportation. Plaintiffs attempted to rely on the inference that if the retail milk store did not sell its product to the public it would necessarily follow that such milk would not be shipped from Wisconsin. But if the public did not buy the retail stores picketed by defendant but bought at other stores handling Wisconsin milk, there would be no diminution of the amount of milk flowing in interstate commerce. The evidence showed that the Lake View Co-Operative of Watertown, Wisconsin, did not suffer any

diminution in the amount of milk it shipped into Chicago. Presumably the public was continuing to buy its milk even though it did not buy milk handled by plaintiff, Lake Valley Farm Products, Inc.

Next, as to the "reasonableness" of restraint this Court in the *Appalachian Coals* case has emphasized that the economic features of the situation are controlling. Unionization of milk wagon drivers in Cook County, beginning in 1902, has obtained a living wage, decent working conditions. The attempted unionization of Lake Valley Farm Products, Inc., is for the purpose of protecting the gains made and for the purpose of avoiding drastic reductions in salaries and deterioration of working conditions. The economic factor is the conflict between entrepreneurs such as the Lake Valley Farm Products, Inc., which seeks to obtain larger profits for its stockholders by means of its particular method of doing business, which will injure union milk wagon drivers in Chicago, and the union which seeks to compete in an attempt to retain the union scale and union working conditions by its appeal to the public.

The effect upon interstate commerce which results from this conflict is a temporary effect in view of all factors considered. The defendants' activities in the attempt to unionize plaintiff, Lake Valley Farm Products, Inc. are reasonable. The effect upon interstate commerce considered in the light of such reasonable activity is not punishable as a violation of the Sherman Anti-Trust Act.

The entire problem of application of Sherman Act to "labor unions" and their activities is discussed in the authoritative work of Berman "Labor and the Sherman Act" (1930) at 85, 86, 12, 22.

See also the collections of authorities in

39 Columbia L. R., 1283 (Dec. 1939).
40 Columbia L. R. 14 (Jan. 1940).

C.

Attempts by a Chicago Milk Wagon Drivers' Union to unionize all Chicago non-union dairy drivers of milk wagons did not constitute a monopoly or an attempt to monopolize within the prohibitions of Section 2 of the Sherman Act.

The majority of the court found that the object of the defendant union was to unionize all distributors of milk sold in Chicago, and that if they did so, the defendant union for all practical purposes would have a complete monopoly over the distribution of milk in Chicago.

The court cites no case and does not expressly refer to the Sherman Act (R. 367).

It is respectfully suggested that this finding is without foundation in law. This court has *never* decided that the activities of any legal union constituted a monopoly within the provisions of Section 2 of the Sherman Anti-Trust Act. The most pertinent language is to the contrary in the decision of the *American Steel Foundries* v. *Tri City Trade Council,* 257 U. S. 184. Mr. Chief Justice Taft said:

> "In a lawful economic struggle or competition between employer and employee as to the share or division between them of the joint product of labor and capital. To render this combination at all effective, employees must make their combination extend *beyond one shop.* It is helpful to have as many as may be in the *same trade* in the same community united, because in the competition between employers they are bound to be affected by the standard of wages of their trade in the neighborhood. Therefore, they may use all lawful propaganda to enlarge their mem-

bership and especially among those whose labor at lower wages will injure their whole guild." 257 U. S. at 209. (Italics ours.)

And again the court said:

"The *Hitchman* case was cited in the *Duplex* case, but there is nothing in the ratio decidendi of either which limits our conclusion here or which requires us to hold that the members of a local labor union and the union itself do not have sufficient interest in the wages paid to the employees of *any employer* in the community to justify their use of lawful and peaceful persuasion to induce *those employees* to refuse to accept such reduced wages and to quit their employment." 257 U. S. at 212-213. (Italics ours.)

No decision of this court can be cited holding that the attempted unionization by union of all employers of one locality is a violation of the monopoly provisions of the Sherman Anti-Trust Act.

One decision of this Court that tends to support *our* contention is *National Assoc. of Glass Manfrs.* v. *U. S.*, 263 U. S. 403 (1923).

The decisions of this court with respect to business combinations are clearly to the contrary. In *Standard Oil Co.* v. *United States*, 221 U. S. 1 at Page 66, this court laid down the rule of reason with regard to monopolies as constituting a violation of the Sherman Act. Subsequent decisions in the *American Tobacco* case, the *United States Steel* case, the *United Shoe Machinery* case having indicated that the national control of a national industry may be substantially concentrated in the hands of one corporation substantially without constituting a violation of the Sherman Act.

The unionization of an industry does not *per se* constitute a monopoly of commerce or trade. The fact that all the employees of an industry are unionized does not constitute the monopoly of trade dealt with by the provisions of Section 2 of the Anti-Trust Act. (See Appendix, p 6.) Clearly that section pertains to the activities of businessmen who seek to directly affect trade. Even if every milk wagon driver in the City of Chicago belonged to the defendant union, how could that be said to constitute a monopoly of trade?

Other cases to the effect that the unionization of an entire local industry is not an illegal act or an illegal purpose are as follows:

Gasaway v. *Borderland Coal,* 278 Fed. 56 (C. C. A. 7, 1921); *Exchange Bakery* v. *Rifkin,* 245 N. Y. 260, 157 N. E. 130 at 132 (appeal dismissed 58 Sup. Ct. Reporter 650); *Williams* v. *Quill,* 277 N. Y. 1, 12 N. E. 2nd 547 at 549; *National Fireproofing* v. *Mason Bldr's Ass'n.,* 169 Fed. 259 (C. C. A. 2, 1909).

D.

Section 20 of the Clayton Act of 1914 legalizes the activities of a craft labor union that seeks to enlist public support in an economic dispute over the signing of a union contract with a non-union dairy by means of placards or banners carried by union members on the public highway in front of retail milk stores selling to the public the products of such non-union dairy which are delivered to the store by members of a competing industrial union.

This court has not been called on to pass upon the meaning of Section 20 of the Clayton Act since the enactment of the Norris-LaGuardia Act in 1932. (See Appendix, pp. 7-8.) We urge that this court at this time should pass upon

the meaning of Section 20 of the Clayton Act so far as it purports to legalize the classes of activities therein specified and that by such construction, this court should hold that activities of peaceful picketing conducted at a retail store vending to the public the products of an employer with whom the picketing union is engaged in a labor dispute is a *legal* act regardless whether or not such activity is described by the older decisions as a "secondary boycott".

One decision of a Federal District Court supports this contention namely, *Diamond Hosiery* v. *Leader*, 20 Fed. 467 at 470.

Mr. Justice Brandeis in his dissenting opinion in *Duplex Press* v. *Deering*, 254 U. S. 443 at 487, 488, stated in substance that in his opinion Congress by passing Section 20 of the Clayton Act had legalized the so-called "secondary boycott".

The importance of permitting free publicity by labor organizations in a democratic society has been recognized since the decision in the *Duplex Press* case in 1921 by the legislatures, both Federal and State, by judges, and by scholars in the field of economics and sociology.

It is also respectfully suggested that to hold that the provisions of the Norris-LaGuardia Act preclude the issuance of an injunction against the so-called "secondary boycott" but that such so-called secondary boycott is still an illegal act subject to suit for damages on the law side of the Federal court is to leave the law in a chaotic condition. The economic and social principles that led to the enactment of the Norris-LaGuardia Statute, the National Labor Relations Act and the Anti-Strike Breaking Act lead to the conclusion that Section 20 of the Clayton Act legalized the peaceful picketing of the stores vending the "unfair employer's" products.

Section 20 of the Clayton Act construed with Section 6 of the Clayton Act in the light of such recent legislation should result in the overruling of the decisions in *Duplex Press* v. *Deering,* and *Bedford Stone* v. *Journeymen's Association.*

E.

The due process clause of the 14th Amendment to the Federal Constitution prevents a Federal equity court from restraining and enjoining union members and working men from carrying a banner or placard on the public highways as a means of communicating information to the public in an attempt by the union to have the public assist the union in its economic controversy with a non-union dairy and with a competing union.

The decisions of this court seem to indicate that if a State statute or a municipal ordinance were so worded as to prevent the defendant union from peacefully picketing the retail stores in the City of Chicago vending the products of plaintiff, Lake Valley Farm Products, Inc., to the public, such statute or ordinance would be held invalid by this court as depriving union members of their rights to free speech within the meaning of the due process clause of the 14th Amendment to the United States Constitution.

Among other recent rulings by this court that would tend to sustain the foregoing suggestion, we refer to the allowance of certiorari in the case of *Thornhill* v. *State of Alabama* (#514, Oct. 1939 Docket) and the noting of probable jurisdiction in the case of *Carlson* v. *California* on Monday, February 12th, 1940, #667, Oct. 1939 Docket.

Does the fact that the restraint is imposed by a Federal Equity Court by decree change the rule of free speech?

We respectfully urge that a court is subject to the constitutional prohibitions just as a state legislature would be.

This problem of the deprival of the rights to free speech by equity decree has been before this court at the Oct. 1939 Term in the cases of:

Shapiro v. *Evening Times* (Docket No. 85, certiorari denied Oct. 9, 1939).

Milk Wagon Drivers Union v. *Meadowmoor Dairies, Inc.* (Docket No. 353, certiorari denied Oct. 23, 1339).

American Federation of Labor v. *Swing* (Docket No. 615, certiorari denied February 5, 1940).

The case at bar involves a *Federal* Equity Court restraint.

It is to be noted that the Circuit Court of Appeals construed the denial by this court of a petition for certiorari in the case of *Milk Wagon Drivers' Union* v. *Meadowmoor Dairies, Inc.*, as a ruling that the constitutional rights of free speech do not permit peacefully picketing if such picketing constitutes a secondary boycott. But the question more correctly stated is, whether or not a court may describe peaceful picketing as a secondary boycott if peaceful picketing is an exercise of the right to free speech?

This question should be decided by this court at some time. The case at bar presents an opportunity for full and complete analysis of the economic and social effects of a decision either sustaining peaceful picketing as an exercise of the right to free speech or as denying it on the ground that it constitutes a tort, *i. e.*, secondary boycott.

Cf. Restatement of the Law of Torts, Vol. 4, Sect. 779 at p. 109-111; and Sect. 799 at p. 144-146.

Under the decisions of this Court, it is now well settled that freedom of speech and freedom of press, which are expressly protected by the First Amendment from infringement by the Federal Congress are among the fundamental personal rights and liberties which are protected by the 14th Amendment from invasion by State action.

Lovell v. *Griffin*, 303 U. S. 444 at 450, and other cases cited (1938).

The right to free speech has been characterized as one which is of the very essence of a scheme of ordered liberty.

Palko v. *Connecticut*, 302 U. S. 319 at 325 (1937).

It is well settled that the due process clause applies to action by State Judiciary as well as by Legislative declaration.

In the case of *Brinkerhof Trust Company* v. *Hill*, 281 U. S. 673 (1930), this court speaking through Mr. Justice Brandeis, said:

> "The violation is none the less clear when that result is accomplished by the State Judiciary in the course of construing an otherwise valid (citing case) State statute. The federal guaranty of due process extends to State action through its judicial, as well as through its legislative, executive or administrative branch of Government (citing cases)." 281 U. S. at 680.

To the same effect, see Ex Parte Virginia, 100 U. S. 339 at 347.

In the *Scottsboro* cases this Court held that individuals were deprived of their liberty without due process of law as a result of ruling by State courts on problems of ordi-

nary procedure such as right of an accused defendant to have counsel at his trial.

Powell v. *Alabama,* 287 U. S. 45 (1932).

Similarly the recent analogous decision in *Chambers* v. Florida (decided Feb. 12, 1940).

In *Snyder* v. *Milwaukee,* (*Schneider* v. *Irvington*) this Court reversed the conviction of a "union picket" convicted of violating an ordinance by distributing handbills on a "picket line." Much of the argument there made to the effect that the "legislature" violated the free speech provisions of the Federal Constitution applies with at least equal force to the case at bar. See 60 Sup. Ct. Rep. 146 at 150 (Nov. 22, 1939).

In *Senn* v. *Tile Layers Union,* 301 U. S. 468, Mr. Justice Brandeis stated that:

> "Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, *for freedom of speech is guaranteed by the Federal Constitution.*" 301 U. S. at 478. (Italics ours.)

Again, at page 480, the court in speaking of the picketing, said:

> "The sole purpose of the picketing was to acquaint the public with the facts and, by gaining its support, to induce Senn to unionize his shop." 301 U. S. at 480.

And again,

> "The unions acted and had the right to act as they did, to protect the interests of their members against the harmful effect upon them of Senn's Action." 301 U. S. at 481.

And again,

> "There is nothing in the Federal Constitution which forbids unions from competing with non-union concerns for customers by means of picketing as freely one merchant competes with another by means of advertisement in the press, by circulars, or by his window display. Each member of the unions, as well as Senn, has the right to strive to earn his living. Senn seeks to do so through exercise of his individual skill and planning. The union members seek to do so through combination. Earning a living is dependent upon public favor. To win the patronage of the public, each may strive by legal means." 301 U. S. at page 482.

Again,

> "It is true that disclosure of the facts of a labor dispute may be annoying to Senn even if the method and means employed in giving the publicity are inherently unobjectionable, but such annoyance like that often suffered from publicity in other connections, is not an invasion of the liberty guaranteed by the Constitution." 301 U. S. at 482.

In the case at bar the union was trying to achieve the same goals and by the same means found constitutional by this court in the *Senn* case.

In the case of *American Steel Foundries* v. *Tri-City Council*, 257 U. S. 184 (1921), this Court said with reference to picketing:

> "We are a social people and the accosting by one of another in an inoffensive way and an offer by one to communicate and discuss information with a view to influencing the other's action are not regarded as aggression or a violation of that other's rights." 257 U. S. at 204.

CONCLUSION.

It is respectfully submitted that this case involves several problems of national importance calling for final determination by this Court. The "area of non-restrainable" economic conflict was broadened by the Norris-LaGuardia Act but the Circuit Court of Appeals for the 7th Circuit has erroneously restricted the applicability and effect of the Norris-LaGuardia Act. At the same time the Circuit Court of Appeals for the 7th Circuit has erroneously broadened the domain of the Sherman Act by construing it in such fashion as to place almost every labor dispute subject to the prohibitions of the Sherman Act.

Wherefore it is respectfully prayed that a writ of certiorari should be granted herein and this Court should review the decision of the Circuit Court of Appeals for the 7th Circuit and finally reverse it.

Respectfully submitted,

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APPENDIX OF STATUTES

APPENDIX OF STATUTES.

Norris-LaGuardia Act.

Sec. 1. That no court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act. (Act of March 23, 1932, c. 90, Sec. 1; 47 Stat. 70; 29 U. S. Code, Sec. 101.)

Sec. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of

such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted. (Act of March 23, 1932, c. 90, Sec. 2; 47 Stat. 70; 29 U. S. Code, Sec. 102.)"

Sec. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State.

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interest in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is de-

scribed in section 3 of this Act. (Act of March 23, 1932, c. 90, Sec. 4; 47 Stat. 70; 29 U. S. Code, Sec. 704.)

Sec. 5. No Court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in Section 4 of this Act. (March 23, 1932, c. 90, Sec. 5; 47 Stat. 71; 29 U. S. Code, Sec. 105.)"

Sec. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof. (March 23, 1932, c. 90, Sec. 6; 47 Stat. 71; 29 U. S. Code, Sec. 106.)

Sec. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the

threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief.

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection. * * * [March 23, 1932, c. 90, Sect. 7, 47 Stat. 72; 29 U. S. C. A. Sec. 107.]

Sec. 8. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration. (March 23, 1932, c. 90, sec. 8; 47 Stat. 72; 29 U. S. Code Sec. 108.)"

Sec. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly

included in said findings of fact made and filed by the court as provided herein. (March 23, 1932, c. 90, Sec. 9; 47 Stat. 72; 29 U. S. Code, Sec. 109.)

Section 13:

When used in this act and for the purposes of this act —(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft or occupation.

(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to

arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

* * *

(Act of March 23, 1932, c. 90, Sec. 13; 47 Stat. 73; 29 U. S. Code, A. Sec. 113.)

SHERMAN ACT.

Section 1: Every contract combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. * * * Every person who shall make any such contract or engage in any such combination or conspiracy, hereby declared to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. (July 2, 1890, Chap 647, Sec. 1, 26 Stat. 209; 15 U. S. Code, Sec. 1; as amended by Public Act No. 314, 75th Congress, approved and effective August 17, 1937.)

Section 2: Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. (July 2, 1890, Chap. 647, Sec. 2, 26 Stat. 209; 15 U. S. Code, Sec. 2).

CLAYTON ACT.

Section 6: That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations, from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws. (Oct. 15, 1914, Chap. 323, Section 6, 38 Stat. 731; 15 U. S. Code, Sec. 17.)

* * *

Section 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge or judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising or persuading others by peaceful means so to do;

or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States. (Oct. 15, 1914, c. 323, sec. 20, 38 Stat. 738; 29 U. S. Code, sec. 52).